Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

| | | |
|---|---|---|
| In the matter of | ) | |
| | ) | |
| Federal-State Joint Board on Universal Service | ) | CC Docket No. 96-45 |
| | ) | |
| | ) | |

To: The Federal-State Joint Board

# REPLY COMMENTS OF
# THE ALLIANCE OF RURAL CMRS CARRIERS

David A. LaFuria
Steven M. Chernoff
Lukas Nace Gutierrez & Sachs, Chartered
1650 Tysons Blvd., Suite 1500
McLean, VA 22102

Attorneys for The Alliance of Rural CMRS Carriers

October 31, 2005

TABLE OF CONTENTS

Page

## SUMMARY

The Alliance of Rural CMRS Carriers' ("ARC") members believe that the Joint Board should focus on ensuring that universal service support is used to drive infrastructure investment in rural areas. ARC's members have seen firsthand the critical need for improving wireless infrastructure in rural areas to fulfill the Congressional mandate that rural consumers have access to ***choices*** in advanced telecommunications services similar to those available in urban areas. The key to ensuring that consumers realize these benefits is accountability.

ARC's members believe that states requiring periodic reporting of the use of support are helping customers realize the benefits that Congress intended to deliver. Support flowing to wireless carriers is being used to build literally hundreds of new cell sites, upgrade plant, improve back-up capacity, and construct other facilities critical to operating a reliable wireless telecommunications network. As far as wireline networks go, the best way to ensure accountability is to implement a system that provides support on the forward-looking costs of an efficient network, and move to full portability of support similar to the non-rural mechanism.

Unfortunately, some commenters suggest that growth in the high-cost fund as a result of competitive entry should be cause for alarm. In fact, growth in the fund should come as no surprise, as CETCs are finally being designated throughout the country as intended by Congress. Those funds represent a significant investment in our nation's wireless infrastructure. Even as wireless carriers are

faced with the same challenges wireline carriers had decades ago in bringing service to rural areas, wireless ETCs consistently receive only a fraction of the support that their wireline competitors receive in the same areas. It is unclear what purpose is served by paying more support to the inefficient wireline provider, and less support to the wireless carrier that is providing the kinds of services consumers increasingly demand.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

| | | |
|---|---|---|
| In the matter of | ) | |
| | ) | |
| Federal-State Joint Board on Universal Service | ) | CC Docket No. 96-45 |
| | ) | |
| | ) | |

To: The Federal-State Joint Board

## REPLY COMMENTS OF THE ALLIANCE OF RURAL CMRS CARRIERS

The Alliance of Rural CMRS Carriers[1] ("ARC"), by counsel and pursuant to the Commission's Public Notice, "Federal-State Joint Board on Universal Service Seeks Comment on Proposals to Modify the Commission's Rules Relating to High-Cost Universal Service Support," FCC 05J-1 (released August 17, 2005) ("*Public Notice*"), hereby provide the following reply comments.

### I. THE JOINT BOARD SHOULD FOCUS ON CARRYING OUT THE MANDATE FROM CONGRESS TO ENSURE THAT UNIVERSAL SERVICE SUPPORT IS USED TO DRIVE INFRASTRUCTURE INVESTMENT IN RURAL AREAS.

Throughout the country, ARC members share a common experience: Many people in rural America cannot use a wireless phone where they live, work and play because there is not enough infrastructure. ARC members are today using federal

[1] ARC is a group of CMRS carriers who are licensed to serve rural areas in Alabama, Alaska, Colorado, Guam, Iowa, Kansas, Maine, Mississippi, Minnesota, Nebraska, New Hampshire, Oregon, South Dakota, Vermont, Virginia, Washington, West Virginia and Wisconsin. ARC's membership is comprised of the following carriers (or their subsidiaries): Alaska DigiTel, LLC, Cellular South Licenses, Inc., Guam Cellular and Paging, Inc., Highland Cellular, Inc., Midwest Wireless Communications, LLC, N.E. Colorado Cellular, Inc., Rural Cellular Corporation and Virginia Cellular, Inc.

high-cost support to knit together wireless networks to significantly improve service in every place where they have been designated.

The Joint Board must recognize the critical need for improving wireless infrastructure in rural areas to fulfill the Congressional mandate that rural consumers have access to ***choices*** in advanced telecommunications services similar to those available in urban areas. With every cell site constructed with high-cost support, roughly 150 square miles of area receives improved access to the health, safety, and economic development benefits of wireless communications. ARC can scarcely imagine a better investment in universal service than funding the construction of wireless networks in rural areas to benefit consumers.

The key to ensuring that rural consumers receive the benefits that Congress intended to deliver is accountability. ARC members are today submitting to state commissions reports of their use of high-cost support. These reports often detail specific investments to benefit rural consumers and expand service out to rural areas. For example, West Virginia, Mississippi, Oregon, Nebraska, South Dakota, Vermont and Maine each require periodic reporting and ARC members are complying with such requirements. To the extent such information is available to Joint Board members in their capacity as state regulators, there is a wealth of information now available demonstrating how funds are being used to improve service to rural America. Much of this information has been filed under seal to protect business plans from competitors.

Wireless consumers today are plowing over $2 billion per year into the federal universal service fund. The consistent experience of ARC members is that consumers want their funds to be used to build wireless networks.[2] And they want accountability by all carriers. ARC members believe that states requiring periodic reporting of the use of support are helping customers realize the benefits that Congress intended to deliver. Support flowing to wireless carriers is being used to build literally hundreds of new cell sites, upgrade plant, improve back-up capacity, and construct other facilities critical to operating a reliable wireless telecommunications network.

As far as wireline networks go, the best way to ensure accountability is to implement a system that provides support on the forward-looking costs of an efficient network, move to full portability of support similar to the non-rural mechanism, and to foster competition. Limiting support to forward-looking costs will stop over-funding ILECs that are not currently investing in their networks, are operating inefficiently, or are paying outsized dividends to their shareholders.[3] The current methodology, which permits incumbents to recover more support the more inefficient their investments, must be changed. Using universal service funds to construct vital wireless networks will foster competition, which in turn will cause

[2] ARC attached to its comments in this proceeding excerpts from a public hearing held in McCook, Nebraska, wherein members of the public discussed their telephone experience and expressed a strong preference for wireless service. Virtually every witness testified that he or she would cut the cord and switch to a wireless phone if it worked everywhere they live, work and play.

[3] ARC members have been frustrated in seeking intermodal local number portability as a result of wireline carriers obtaining waivers. In too many cases, the reason given is antiquated plant that is not able to provide local number portability without substantial investment, begging the question as to why high-cost support is not being invested to modernize wireline plant.

all carriers to lower prices to consumers and operate more efficiently, lowering the need for universal service in the long run.

## II. GROWTH IN THE FUND AS A RESULT OF CETC ENTRY IS BOTH EXPECTED AND BENEFICIAL.

Some commenters act as though growth in the high-cost fund as a result of competitive entry should be cause for alarm. In fact, growth in the fund should come as no surprise, as CETCs are finally being designated throughout the country as intended by Congress. In some areas, nine years after the 1996 Act was passed, still there are no CETCs. ARC's review of USAC's HC01 spreadsheet for the fourth quarter of 2005 shows approximately $150 million of support going to CETCs, or six hundred million annually. Far from being a "political" problem, as some have posited, those funds represent a significant investment in our nation's wireless infrastructure. We have recently seen several examples of how critical wireless infrastructure outperforms wireline networks in natural disasters, permitting people to move away from danger while retaining the ability to communicate. The speed with which wireless networks recover, to permit first responders and those left behind to communicate also outstrips wireline technology.

Since 2001, rural ILECs have drawn well over $12 billion in federal support. Today, the overwhelming majority of universal service contributions made by rural wireless consumers subsidize not the construction and expansion of wireless networks, but the upkeep of legacy wireline networks. While ARC members understand the important service provided by wireline carriers, it is clear that the twisted copper network supported by the high-cost system have been bought and

paid for many times over throughout the decades. Support should be increasingly targeted to providing consumers what they want and need – wireless services that provide mobility, wider local calling areas, lower prices, and a host of ancillary benefits not available on the wireline network. Once a cell site is constructed to provide basic voice services, it is a very short step to invest additional capital generated by operating revenues to bring high-speed data access, enabling the full benefits of smart phones and laptops that urban consumers take for granted and rural consumers are clamoring for.

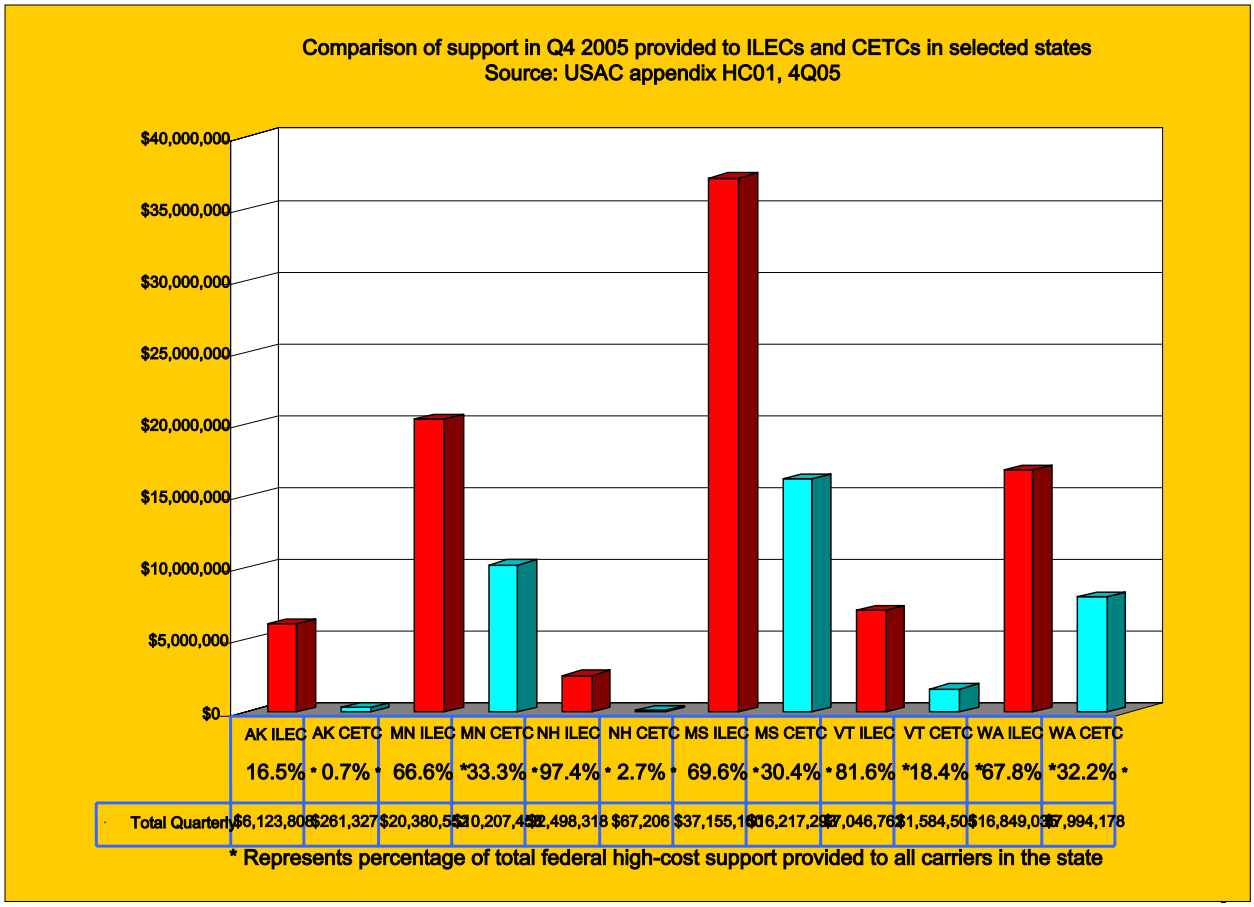
Rather than focus on the amount of support CETCs are drawing, the Joint Board should note that ARC members are consistently drawing lower levels of support than ILECs, even though they are taking on the obligation to respond to all reasonable requests for service throughout their service areas. To cite some examples:

- Alaska DigiTel is designated in the area served by the Matanuska Telephone Association ("MTA"), but draws only 4% of the support provided to MTA and 0.7% of the total federal high-cost support provided to Alaska. MTA receives 16.5% of the federal support provided to Alaska.
- Rural Cellular Corp. ("RCC") and Midwest Wireless Communications, LLC ("Midwest") have been designated for areas that combine to cover virtually all of rural Minnesota. Four other CETCs serve various regions of the state, each overlapping partially the service areas of

RCC and Midwest. Combined, six CETCs serving in the state draw half of what ILECs draw to serve the same area and only a third of the total federal support provided to the state.

- In New Hampshire, RCC is a CETC in virtually the entire state, but draws only 2.6% of what ILECs draw to serve the same area and only 2.7% of the total federal support provided in New Hampshire. At this time, RCC is the only CETC designated in New Hampshire.
- In Mississippi, Cellular South has been designated in the entire state as a CETC. USAC's web site lists twelve other CETCs in the state, covering various service areas that overlap Cellular South. Together, thirteen CETCs in Mississippi draw less than half of the support provided to ILECs and only 30.4% of the total federal support provided to the state.
- In Vermont, RCC has been designated in the entire state as a CETC, but draws less than a 25% of the support drawn by ILECs in the state, and only 18.4% of the total federal support provided to the state.
- In Washington, where six CETCs have been designated in various service areas throughout rural portions of the state, they collectively draw less than half the support provided to ILECs in the state and less than a third of the total federal support provided to the state.

For these head-to-head comparisons, we have summarized this data in the chart below:




This data casts the debate over how high-cost support is being used in an entirely different light than has been presented by ILEC commenters. CETCs are taking on the obligation to construct networks into rural areas and to respond to all reasonable requests for service, while receiving a fraction of the support used by ILECs to keep mature networks running. This data lends support to the argument that wireless carriers are more efficient in delivering services to consumers.

The question must be addressed: What public policy supports the annual investment of over $3 billion in areas served by rural telephone companies to maintain the networks of inefficient providers of the supported services? Stated another way, why should the people who pay for universal service support continue

to pay over $3 billion per year to maintain wireline networks when consumers today are choosing wireless as their preferred method of voice communications ***in every area where wireless service quality is high?***

If, as some claim, universal service should not be used to support competition, then why should it be spent to support an inefficient monopoly? ARC doesn't agree with this position, but if it prevails, surely public funds would be much better spent supporting an *efficient* monopoly to serve rural America.

## III. THE COMMENTS RAISE SEVERAL QUESTIONS THAT DESERVE RESPONSES.

When the Joint Board reconvenes to determine, in part, how to provide support to CETCs, the following questions should be addressed.

*1. How many ETCs should be designated in a particular area?*

The answer to this question depends upon whether the Board recommends a "command and control" system or a market-driven system. Under the former, an ETC would be chosen for each area and fully supported on its costs, similar to the mechanism for ILECs. Other carriers would not have the benefits of subsidies. In areas where the ETC constructs facilities with support, a system for requiring open access by other carriers and reviving the resale rule would be required to prevent anti-competitive practices by the carrier chosen to be an ETC. There would be no competition among various carriers for support and consumers.

The latter option, a market-driven system, is what we have today. Competitors are encouraged to enter, and are rewarded only when they serve a

customer with facilities. Getting a customer requires a carrier to construct and operate facilities before it can get support. The decision whether to construct is made after careful business planning, since the amount of revenue and support funds must together be sufficient to support the business plan. The number of ETCs in a particular area is irrelevant, because there is a cap on the number of customers which can be captured in each area. That is, CETCs have to share the available support in an area and fight for consumers to get it, while incumbents are guaranteed a profit under the system, no matter how many customers they gain or lose.

In a market-driven system, it matters not how many CETCs are designated in a particular area because the facilities constructed will only be those needed to provide service to consumers. In a sparsely populated area that would support only one CETC, those who are designated second, third or fourth will not be able to construct facilities, but must fulfill their obligations to respond to all reasonable requests for service through resale of the first CETC's facilities. In so doing, only the first CETC will receive support, as resale customers do not qualify for support.

As shown in the chart above, even where numerous ETCs have been designated in rural portions of the state, they draw substantially less support than do incumbents. This is true even in states such as Minnesota and Mississippi, where CETCs have been operating for nearly four years now.

In sum, CETCs have to share support and have no guaranty that support will be sufficient to ensure success. Incumbents receive support that is sufficient to

guaranty success, even if consumers leave them. The FCC set this system up in 2001 to provide ILECs with a five-year window to prepare for full competitive entry. Modifying the current system to achieve full portability – so that all carriers have to fight for support and customers – is the single best way to limit growth in the fund, accelerate consumer benefits, and force ILECs to operate more efficiently so as to minimize growth in the fund.

*2. What is the solution for CETCs receiving support in low-cost areas that were gained without support?*

If CETC customers are in areas that are high-cost for the ILEC, then it is appropriate for the CETC to receive support. If the customers are in areas that are low-cost for the ILEC, then the CETC should not receive substantial high-cost support. The solution to CETCs receiving uneconomic support in low-cost areas is ILEC disaggregation under Section 54.315 of the Commission's rules to more accurately target support to high-cost areas. The disaggregation rule was implemented in 2001 to protect incumbents from subsidized competition in low-cost areas while providing competitors the right incentive to enter higher cost areas.[4] CETCs have no control over the disaggregation process.

[4] *Federal-State Joint Board on Universal Service, Fourteenth Report and Order, Twenty-second Order on Reconsideration, and Further Notice of Proposed Rulemaking,* 16 FCC Rcd 11244 (2001) ("*RTF Order*").

After developing a disaggregation framework with the support of ILECs,[5] the FCC declared the problem of cream-skimming to be moot.[6] Without citing any supporting evidence, the FCC's recent decisions have reversed course, vaguely indicating that disaggregation may not be sufficient in some circumstances to resolve cream-skimming concerns. Given that the rules permit ILECs to disaggregate to an unlimited number of sub-zones, this decision cannot withstand scrutiny.[7] The Joint Board should take the opportunity to revisit this rule and recommend the immediate disaggregation of support by all rural ILECs, at a minimum to the wire center level. This will reduce support going to competitive carriers in low-cost areas and give competitors the appropriate incentive to build new facilities in high-cost areas because they will receive the proper market signal.

This solution will also remove the need for the FCC's imprecise "population density" test for determining cream skimming, developed in the *Virginia Cellular* case.[8] That test, which denies ETC status to competitors if they just happen to

---

[5] *See* "Disaggregation and Targeting of Universal Service Support," RTF White Paper #6 (September 2000) at p. 6, available at http://www.fcc.gov/wcb/universal_service/whitepaper6.doc ("Both competitive and incumbent carriers agree with the need to disaggregate and target universal support below the study area level … Thus, there is reasonable consensus that disaggregation of universal service support into smaller geographic areas furthers the goals of the 1996 Act by benefiting the highest cost rural customers and enabling competitive market entry. Indeed, disaggregating support targets that support to the most rural and high-cost zones within a given study area, enabling customers in those areas to receive services that are truly comparable to those provided in urban areas.") ("White Paper #6").

[6] *See Western Wireless Corp., Order on Reconsideration,* 16 FCC Rcd 19144, 19149 (2001) ("*WWC Wyoming Recon. Order*"); *Western Wireless Corp., Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota,* 16 FCC Rcd 18133, 18141 (2001) ("*Pine Ridge*").

[7] *See Virginia Cellular LLC et al. v. FCC,* Case No. 05-1807 (4th Cir.) (pet. for rev. filed July 25, 2005).

[8] *Virginia Cellular, LLC,* 19 FCC Rcd 1563, 1578-79 (2004) ("*Virginia Cellular*").

serve the more densely populated areas of an ILEC, but grants ETC status to competitors if they serve chiefly high-cost areas, must be done away with. The FCC's current policy sends a perverse signal to competitors, to wit, "you can be designated when you serve the scraps, but you will not receive disaggregated (and appropriate) support levels that provide the appropriate incentive to apply in such areas." The Washington Commission, which has disaggregated its entire state, has repeatedly rejected cream-skimming claims because not a single ILEC has ever introduced any evidence of cream-skimming nor demonstrated any harm to them as a result of its many CETC designations:

> The Commission's experience is that this approach, if not benefiting customers (which it does), certainly is not failing customers. In the five years since we first designated an additional ETC in areas served by rural telephone companies, the Commission has received only two customer complaints in which the consumers alleged that a *non*-rural, wireline ETC was not providing service. No Rural ILEC has requested an increase in revenue requirements based on need occasioned by competition from wireless or other ETCs.[9]

*3. Shouldn't Competitors Have the Same Level of Regulation as ILECs?*

The 1996 Act does not require a CETC to be an ILEC.[10] Proponents of regulating CETCs as ILECs confuse regulatory parity with competitive neutrality. Regulatory parity is appropriate when carriers are competitors with similar market power. It is not appropriate when one carrier is a monopoly and the other is not. ILECs are regulated more heavily because they are monopoly carriers, ***not*** because

---

[9] Sprint Corp. d/b/a Sprint PCS et al., Docket No. UT-043120 at p. 11 (Wash. Util. and Transp. Comm'n, Jan. 13, 2005).

[10] *Federal-State Joint Board on Universal Service, Report and Order,* 12 FCC Rcd 8776, 8859 (1997) ("*First Report and Order*").

they are ETCs. ILECs are pushing for deregulation in every state, but they are not volunteering to relinquish universal service support. The much better course is to require all universal service rules to be applied on a competitively neutral basis. As competition enters, ILECs can be deregulated as they lose their monopoly control of the local exchange marketplace.

A second aspect of this question is what, if any, service quality standards should be placed on CETCs. Some parties advocate a "flash cut" approach wherein immediate monopoly-style service quality regulations are immediately placed upon designation of a CETC. This approach is not competitively neutral. It is the construction of networks over time while receiving support that underpins the service quality that ILECs are able to deliver. The level of regulation imposed on CETCs must take into consideration the relative immaturity of wireless networks in many, if not most, of the rural areas in the nation. While ARC is not opposed to service quality regulation that is reasonably related to advancing the goals of universal service, the surest guarantor of service quality is the market-based incentive to serve customers well, or else lose both the support and the revenue associated with that customer.

*4. Should universal service support be subsidizing competition?*

Of course it should! The universal service provisions contained in the 1996 Act had two purposes which must be given equal weight – advance universal service and promote competition.[11] With every cell site constructed, the availability of the

[11] *See First Report and Order, supra,* 12 FCC Rcd at 8802 ("Commenters who express concern about the principle of competitive neutrality contend that Congress recognized that, in certain rural areas,

nine supported services increases geographically. In addition, consumers receive new choices in telephone service that they did not previously have. The availability of choices drives competition, benefits consumers, and ultimately reduces the need for high-cost support. No matter how the universal service rules are revised, these two principles cannot be forsaken.

## IV. CONCLUSION.

ARC urges the Joint Board to be faithful to the Communications Act and to continue on the course that led up to the 2001 *RTF Order* by moving rural wireline carriers to forward-looking costs and making high-cost support fully portable.

Respectfully submitted,

THE ALLIANCE OF RURAL CMRS CARRIERS

By:_____

David A. LaFuria
Steven M. Chernoff
Lukas, Nace, Gutierrez & Sachs, Chartered
1650 Tysons Blvd., Suite 1500
McLean, VA 22102
703-584-8666

October 31, 2005

---

competition may not always serve the public interest and that promoting competition in these areas must be considered, if at all, secondary to the advancement of universal service. We believe these commenters present a false choice between competition and universal service.") (footnote omitted).